SUPREME COURT, U. S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 518

ANNIE MARY TIMMONS, *Petitioner,*

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. MCLEOD, as Attorney General of the State of South Carolina, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The petitioner, Annie Mary Timmons, petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Fourth Circuit, dismissing the appeal of the petitioner, from an order for remand by the United States District Court for South Carolina, at Columbia.

ORDERS BELOW

No opinions were rendered by the Courts Below. The order of the court of appeals (App. A, p. 1a, *infra*). The order of the District Court (App. B, pp. 2a-3a, *infra*). Petition in District Court. (App. C, pp. 4a-5a, *infra*).

JURISDICTION

The order of the Court of Appeals was entered on Feb. 17, 1970. Petitioner's motion for rehearing was denied on March 13, 1970. Petitioner's motion for stay of mandate was granted March 25, 1970. Chief Justice Burger signed an order extending the time for writ of certiorari to the Circuit Court of Appeals to August 10, 1970, inclusive. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Did the appeals court err when it dismissed the petitioner's appeal, from the District Court's order of remand, by misapplying and misconstruing 28 U.S.C.A. 1447(d), to the end that petitioner's guaranteed constitutional rights were violated and her property taken without due process of law, where U.S. Treasury funds are used in payment for condemnation properties, under the United States Constitution, Amendment V and Article III, Sections 1 and 2.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution provides pertinent parts as follows:

Amendment V.

"... Nor be deprived of, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Article III. Section 1.

"The Judicial Power of the United States, shall be vested in one Supreme Court," . . .

Section 2.

"The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * *; to controversies to which the United States shall be a party; and between a State, or the citizens thereof, . . ."

STATEMENT

This is a federal and state condemnation civil proceeding, in that it involves United States Treasury funds in payment for land and several hundred modern furnished rental apartments in four separate 3 story brick buildings, with new modern equipped restaurant, all situate on the premises and in use, the earnings and income from said rentals, providing the petitioner with her livelihood.

This action initially arose for specifically condemning this property and buildings thereon under a special statutory provision applicable to the petitioner and her several rental properties by the South Carolina General Assembly, Spring Session of 1969. The petitioner owns in title fee simple, all of the properties both real, personal and rental-earnings therefrom, and the U.S. District Court for South Carolina at Columbia, has at all times had jurisdiction of this action, because substantial direct federal constitutional questions are involved, including U.S. Treasury funds, provided by HUD for the condemnation payments, supposedly, under open Space Land Program, Sec. 401 et Seq. of the Housing and Urban Development; and also federal agencies and instrumentalities, are directly involved.

There is a diversity of citizenship, and forceful taking of private property, for supposedly public use and necessity, but no proven evidence, is of record of this condemnation claim or its ultimate use or disposition; and all without due process of law and without just and adequate compensation to replace properties and earnings. U.S. Constitution Amendment V, Article III, Secs. 1 and 2. Moreover the controversy between the parties in this jurisdictional case exclusive of interests and costs, exceeds the sum or value of Ten Thousand ($10,000.00) Dollars, of which the District Court of South Carolina has original jurisdiction.

The petitioner pointed out in her petition, for removal to the trial district court, in which the federal and state condemnation of rental properties and the parties involved, were within that original jurisdiction of that court, that substantial federal questions are involved, under the constitution and laws of the United States, regarding the unconstitutionality of a special act of the State of South Carolina for this sole purpose, against the petitioner, all of which as above cited, required the convening of a special three federal judge constitutional tribunal pursuant to the provisions of 28 U.S.C.A. secs. 2281-2284.

In a one day appearance on Nov. 25, 1969, the petitioner's petition for removal was denied, and the trial court refused to assume jurisdiction of the various federal constitutional questions aforementioned and entered an order for remand on Nov. 26, 1969, to the state court of general jurisdiction, including all the federal and U.S. Constitutional questions raised therein. (Vol. 1, App. B, pages 1, 20-22, Cert. Appeal Record.)

Any delay in petitioner's filing her petition for removal, was due to her illness and her inability to obtain

counsel for this purpose earlier, both of which were beyond her control. However this alone, which was proper and sufficient justification, should not prove fatal to the trial court assuming jurisdiction of the federal and United States constitutional questions involved and presented, and requiring the trial court's consideration and jurisdiction, because the time for filing a petition for removal has been held not to be essential to the jurisdiction, the provision on the subject is but modal and formal.

The district trial court, ordered the petitioner's case for removal precipitatiously remanded after short of a one day appearance of the parties, to the South Carolina court of general jurisdiction, citing 28 U.S.C.A. 1447. (App. B, pp. 2a-3a, *infra*).

On December 24, 1969 petitioner filed a notice of appeal to obtain a review of the order of the trial court in refusing to assume jurisdiction of all of the federal questions. Mandate herein for Stay was approved by the court of appeals and filed on March 25, 1970, pending application of the petitioner to the Supreme Court of the United States for a writ of certiorari to the Court of Appeals for the Fourth Circuit. Chief Justice Burger signed an order extending the time to file for the Writ to August 10, 1970, inclusive.

REASONS FOR GRANTING THE WRIT

1. Petitioner urges that the order of the court of appeals, dismissing the petitioner's appeal from the trial court's order of remand compounded the erroneous determinations made and the erroneous order of the district court, by the misapplication and misconstruction of 28 U.S.C.A. 1447(d) (App. A, *infra*, page A-1)

2. Petitioner contends, both the appeals and trial court orders below, were a violation of petitioner's guaranteed federal rights, and the forceful taking of her private properties without due process of law, and without just and reasonable compensation, where United States Treasury funds, were used in payment of these condemned properties. Moreover federal constitutional questions are directly involved and irrevocably interlocked in this appeal to this court. Constitution of the United States of America, Amendment V, Article III, Sections 1 and 2.

3. 28 U.S.C.A. 1447(d) cited by the court of appeals, as well as the other provisions of the code mentioned herein, have been amended by the Congress in numerous enactments, as late as July 2, 1964 and otherwise, and is reviewable on appeal by this Court, as novel and unique questions, heretofore, not passed on or decided by this court, under the same set of facts and circumstances involved here. Therefore, the questions presented here have not been settled by this court. Moreover there is nothing in this entire record of petitioner's case to evidence any sort of delay of the proceedings of condemnation or to precipitate or foster any kind of litigation in the protection of her rights and income producing property. All of petitioner's facts have never been adduced in a trial court of record.

4. The trial court below remanded the petitioner's case for trial under 28 U.S.C.A. 1447 without itself complying with all its pertinent and required provisions for a hearing, and in so doing committed a harsh abuse of judicial discretion beyond reason, and a misuse of the judicial process, and a disregard of the federal and constitutional questions involving substantial rights thereunder, when it refused to assume

jurisdiction of these landmark federal issues presented, 28 U.S.C.A. Sec. 2281-2284.

5. Petitioner contends and respondent admits that U.S. Treasury funds are used in payment of the condemnation properties, involved in this appeal and owned by the petitioner in fee simple title, both real estate and the four apartment rental unit buildings. In addition the Secretary of Housing and Urban Development is on written record herein, as advising the petitioner, that in use of these federal funds in payment of the condemnation properties, that there must not be any violation of Federal procedures, and that all federal statutes and regulations must absolutely be complied with. Sec. 401 et Seq., Housing and Urban Act of 1965, as amended.—Proceedings, Published No. OS-5. Petitioner contends that it is a matter of record the aforesaid have not been complied with, though an investigation was ordered by HUD officials but no report of the results have been obtainable or published. See certified record on appeal and proceedings on appeal; two volumes 4th C.C.A. July 2, 1970 for use of Supreme Court in appeal.

6. The landmark of the due process of law, is the opportunity to be heard and the right to a trial in a Court of proper jurisdiction, but petitioner has been denied this right, specifically as to her guaranteed federal constitutional rights, and taking of her properties and earnings from rental therefrom, without due process, where federal questions and issues are directly involved, by payments with U.S. Treasury money in the condemnation. Moreover the petitioner's request for a federal trial; argument by personal appearance and filing of formal printed briefs on these substantial federal constitutional questions before the lower courts

pursuant to the rules and statutes and decisions, have been denied, on a technicality of refusing jurisdiction. All appearances before the court of appeals were disposed of by motions without any oral presentation or argument thereon, or any printed brief on the issues allowed, though requested by the petitioner.

7. Petitioner is entitled to the protection of the Fifth Amendment, and by this Court granting the Writ to the Fourth Circuit court of appeals, would certainly settle the federal constitutional condemnation question presented, and afford a guideline in future federal and state condemnation proceedings where U.S. treasury funds are used in payments of the condemned properties exclusively, under U.S. Constitutional and federal statutes, including HUD.

8. Based on the foregoing authorities and reasoning, petitioner respectfully submits, when the lower trial district court refused to assume jurisdiction in this case, such action was a prejudicial error of law, violation of her United States Constitutional rights, abuse of judicial discretion and misapplication and misconstruction of the judicial process. In addition as a matter of record herein, it was specifically a failure of the trial court to completely comply with the Federal rules of Appellate procedure and the U.S.C.A. in the petition for removal, requiring a three federal appeal tribunal, as requested, for a hearing on the United States Constitutional questions involved and presented, the number of days required under the rules and the code; and the federal constitutional questions were likewise disregarded. Moreover the trial court in disposing of petition for removal in less than one day, observed in its order that all parties in the condemnation proceedings were not included in the re-

moval petition, which made it defective, citing the omission herein of Home Federal Savings and Loan Assoc., holder of the first mortgage on petitioner's properties, and who was a party to the condemnation proceedings below. Petitioner contends that the trial court after taking judicial notice of this party omission, aforesaid, should have ordered of its own volition that Home Federal be made a party forthwith, since federal funds in payment, agencies and instrumentalities, had their funds guaranteed, protected and secured, to certain amounts.

9. The petitioner further points out here that the district trial judge stated in his remand order that "I am not ruling on whether a federal issue is involved, for none appears in the proceeding before me." Petitioner wants this federal issue passed on in this appeal. In spite of this statement in his order, the trial court had just finished observing that "it would be necessary for the Association, meaning Home Federal Loan and Savings Assoc. to be made a party thereto. "28 U.S.C.A. 1441." (Appendix 13, p. 2a, *infra*) This trial court ruling was obviously erroneous on its face, because such an assertion in an order of this importance is clearly a federal issue, among the many others heretofore cited by petitioner of record, and the trial court should have made Home Federal a party for the reasons aforestated.

10. Petitioner concedes that the formal omission of the party Home Federal Savings and Loan Assoc. from the removal petition was an oversight and inadvertent error as caught by the trial court and under and pursuant to established and settled federal law, should have taken judicial notice. The trial judge should have made the Home Federal entered a party along with the peti-

tioner, since both were also being sued against their wishes. This alone, demands jurisdiction of a federal issue, and where supported by U.S. Treasury money in condemnation payments and the Fifth Amendment and agencies and instrumentalities, where the full faith and credit of the U.S. government, in certain guarantees of funds are involved. Petitioner, prays that this Court now make the Home Federal Savings and Loan Association a party to this appeal and proceedings, who holds the first mortgage over petitioner's properties in this condemnation payment, with federal funds, exclusively.

CONCLUSION

Because the order of the appeals and trial court below, refuses to decide a novel and unsettled federal question, with certain conflicts and possibly against public policy, payments in condemnation with United Treasury funds, involving, also, HUD, the United States Constitution, questions of federal law—these questions should be settled by this Court, the petition for certiorari should be granted.

Respectfully submitted,

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